

REMARKS

Claims 1-22, as amended, appear in this application for the Examiner's review and consideration. Claims 1, 3, 4, 7, and 22 have been amended herein to recite that the carbohydrate is maltodextrin. Claim 3 has been amended to recite "consisting essentially of" rather than comprising. Other claims have been amended to delete language that is duplicative due to the amendments made to the independent claims. No new matter has been introduced with these amendments, and they should be entered at this time to at least reduce the issues for appeal. Furthermore, the amended language was previously presented to the Examiner in the dependent claims, so that there are no new issues to be considered in evaluating the patentability of the independent claims. In view of the following comments, it is believed that another reasons for entering these amendments is that they place the entire application in condition for allowance.

Claim 1 was rejected under 35 USC 102(b) as being anticipated by Rubin. Claim 1 is directed to a food supplement for enhancing the nutritive value of a potentially-nutrient deficient meal and includes maltodextrin as the main carbohydrate. In contrast, Rubin is directed to an infant formula comprising DHA, EPA and immunoglobins. As is known, infant formula constitutes an infant's meal(s).

Rubin discloses an infant formulation comprising 8-40% fat, 32-80% carbohydrate, 8-28% protein and the remainder water. As evident from the distinct needs of infants, the formulation is predominated by the fat and carbohydrate components. As the present invention is not an infant formula, claim 1 recites a powder composition for adding to food comprising at least one fat or oil source in an amount between about 40-50%, maltodextrin in an amount of about 25 to 35%, and a protein between 20 to 30%.

As Rubin does not disclose a food supplement that includes maltodextrin as the carbohydrate, nor the balanced amounts of nutrients, Rubin does not disclose, teach or suggest, the elements of claim 1. The Examiner apparently agrees with this since claim 2, which recited maltodextrin as the carbohydrate, was not rejected over Rubin. Applicants respectfully request the rejection to claim 1 under 35 USC 102(b) over Rubin be withdrawn.

Claims 1-22 were rejected under 35 USC 102(b) as being anticipated by Bonnasse for the reasons stated on page 2 of the Office Action. Applicants traverse.

Before addressing Bonnasse, it is believed that a brief summary of the present invention would be helpful. The present invention is directed to a food supplement. As recited in the claims, the balanced powder composition is added to food. Thus, the invention

of the claims is not intended to replace a meal. Rather, the consumer sprinkles or admixes the composition on food, or an otherwise prepared meal, for the purpose of ensuring the consumption of a nutritionally balanced meal. Importantly, the food supplement is devoid of flavor or is neutrally flavored, so that when mixed or sprinkled over food, the food flavors are not altered or the neutral flavor of the powder composition is easily masked by the food flavor. See, page 1, paragraph [0012] and [0013] of published application. Thus, the present claims are directed to a supplement for enhancing the nutritional value of a meal, as recited in claims 1 to 3, a method of manufacturing the food supplement, as recited in claims 4 to 6, and a method of enhancing the nutritional value of a food, as recited in claims 7 to 22.

In contrast, Bonnasse is directed to a process for preparing a granular food product, and in particular is directed to a process for preparing a granular food product for a liquid infant food product. See, Col. 2, line 11-13. Bonnasse does not disclose, teach or suggest a food supplement or powder composition to be added to food for providing balanced nutrition that might not otherwise be achieved by a meal. Nor does Bonnasse disclose, teach or suggest a method for manufacturing such a composition. Indeed Bonnasse does not disclose, teach nor suggest a method of enhancing the nutritional value of a food without affecting its taste. Instead, Bonnasse is directed to the entire meal itself, and in particular liquid meal for infants.

Claims 1 and 4 are not anticipated by Bonnasse. Both claims 1 and 4 are directed to a novel food supplement. Specifically, both claims recite "a balanced powder composition for adding to food..." As Bonnasse does not disclose a food supplement, present claims 1 and 4 can not be anticipated by Bonnasse.

Moreover, claim 1 recites that the energetic amount of protein is between about 20% and 30%, the energetic amount of fat and oil is between about 40% and 50% and the energetic amount of maltodextrin is between about 25% and 35%. Thus, not only are the macronutrients balanced, i.e., none of the nutrients highly dominate the mixture. The carbohydrate, maltodextrin is required. Bonnasse on the other hand discloses a very different formulation, and does not require maltodextrin in its formulation. Specifically, Bonnasse discloses a very high carbohydrate content, i.e., 5% to 95%, up to 40% protein, and up to 80% oil or fat. Thus, the food product of Bonnasse has a predominance of carbohydrate and/or fat which it would need to have in order to be a complete meal. Further, Claim 4 recites the step of homogenizing a heated mixture of fat or oil, carbohydrate, protein, emulsifier and water, and drying the mixture to form a free flowing powder. Bonnasse does not disclose these elements. In fact, Bonnasse discloses that the granular food product is

produced by simply shaking together the components with warm or boiling water and a stable emulsion is formed without the need for homogenization. See Col. 2, lines 10-11.

As all the elements of claim 1 and claim 4 are not disclosed by Bonnasse, neither claim is anticipated under 35 USC 102(b) over Bonnasse. Applicants respectfully request that the rejection to these claims be withdrawn.

Claims 2, 3 and 5-22 were rejected under 35 USC 103(a) as being obvious over Bonnasse for the reasons stated on page 3 of the Office Action. Applicants traverse.

As mentioned above, Bonnasse is directed to a granular food product, whereas the present claims are directed to a method and product for enhancing the nutritional value of food, and in particular to a food supplement. Bonnasse does not teach or suggest a food supplement. Moreover, the problem addressed by Bonnasse was to provide a simple process for producing granular food products from carbohydrate, protein, and oil or fat. To that end, Bonnasse teaches mixing carbohydrates and/or protein rich materials with lipids, and further mixing the mixture to obtain a dough-like mix which can be formed into granules by moistening and particle to particle contacting. See col. 1, lines 56-65. In contrast, the present invention is directed to the problems associated with nutritional deficiencies of basic meals. Therefore, the problems addressed in the art are totally different for Bonnasse as compared to Applicants. Bonnasse was not at all concerned with providing a supplement to be added to potentially nutrient deficient foods, it was concerned with a process for forming granular food.

It is noted that Bonnasse does disclose maltodextrin in columns 3 and 4, but this is as a binder to make granulated particles and note as a carbohydrate to provide energy to the composition. Also, the amount of maltodextrin is relatively low, namely 7.5 parts of an aqueous solution of 40% water and 60 % maltodextrin, or about 4.5 wt. %, in contrast to the present invention's requirement of at least 25% maltodextrin.

As the Bonnasse and Applicants are concerned with disparate problems in the art. Their solutions to such problems, i.e., their inventions, are not suggestive of each other. Specifically, the process of Bonnasse comprises mixing edible powdery carbohydrates and/or protein rich material with lipids..." This "and/or" language suggests that both carbohydrate and protein are not required. Such a suggestion actually teaches away from a food supplement for enhancing potentially nutrient-deficient meals. Thus, taking the reference as a whole, as one should, Bonnasse clearly does not teach or suggest a balanced powder composition for supplementing food, nor does it teach or suggest a method for manufacturing such or a method of enhancing the nutritional value of a meal.

Furthermore, claims 3 omits the additional components of Bonnasse so that this claim is further distinguishable from the cited patent. For example, this claim would exclude the water that is required by Bonnasse to prepare his composition in a form that is edible. As the present composition is added to food, it does not require and in fact does not include, water to be effective in use.

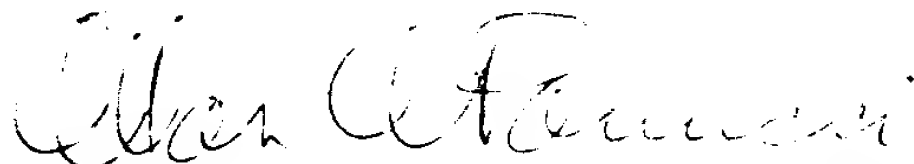
In addition, as Bonnasse is directed to food, it is incorrect to believe that the product is devoid of any flavor. Even if embodied as an infant formula, although bland it might be, as suggested by the Examiner, bland flavor and devoid of any flavor, are not suggestive of each other. Therefore, claims 2, 3, 5-22 are not rendered obvious over Bonnasse. Applicants request that the rejection to the claims be withdrawn.

In view of the above, it is believed that claims 1-22 are now in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree, then a telephonic or personal interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the claims.

6/26/03

date

Respectfully submitted,



Allan A. Fanucci (Reg. No. 30,256)

WINSTON & STRAWN

Customer number 28765

(212) 294-3311